MATERIAL FACTS.

The appellant, Paul Senn, first learned the trade of tile setting in Miami, Florida, in 1930, during which year he worked approximately two weeks as a helper and eight months a a tile setter (R. 48). In 1931 he came to Milwaukee and entered into the tile-laying business under the name of Paul Senn & Co., an unincorporated firm, and started to solicit work as a plastering and tile-setting contractor (R. 49). Previous to this time he had been a plastering contractor (R. 47, 48).

One of his first acts upon starting business in Milwaukee was to confer with Mr. Melville, president of the Tile Setters Union, Local 5, relative to co-operating with union regulations in the tile-setting industry. At that time the union had no formal contracts with the various other employers and contractors in the city, but did have what might be considered "gentlemen's agreements" regarding the hiring of union labor and complying with union rules. The appellant agreed to co-operate (R. 85). Later, upon visiting one of the jobs on which Mr. Senn was employed, Mr. Melville discovered that he was not working under union rules, since he (Mr. Senn) was working as a nonunion helper with a union journeyman; and also employed another nonunion man, his brother, to help on the job. He was informed of the facts, but did nothing to correct them (R. 39-41, 86, 88).

The labor history of appellant over the period of years starting with 1931 and until 1935, when the dispute with respondents became acute, indicates that no attempt was ever made to conform with union rules and regulations either in number of hours worked (R. 70), or Sunday employment (R. 71), or in payment of the union scale of

wages (R. 71, 73-76). The record further indicates that he employed his brother and used him as a helper approximately 10 per cent of the time (R. 69; Old Record 141-142); that he entered into a partnership with William Neidner, a union journeyman, who gave up his membership in order to enter into the partnership (R. 70); and for the past two and a half years he has employed Arnold Holly, a suspended union member, knowing of Holly's suspension and the reasons therefor (R. 70-71). The question of Holly's reinstatement into the union as a condition precedent to Senn entering into the contract is a basis of dispute (R. 34-35, 54, 58).

During the entire period that the plaintiff was engaged in the tile contracting business a great deal of his time was devoted to working either as a helper or a tile setter, performing work within the scope of the journeyman's craft (R. 49, 50; Old Record 84, 86-89, 177). Most of the work he did was that of a tile setter. From May, 1934, to May, 1935, out of a total of 1,777 hours on jobs, he attributes 771 hours to himself, or 40 per cent (R. 51, 53).

After the original negotiations which took place when appellant entered into the contracting business the record shows that there were occasional conferences with union officials. Finally, in March, 1935, the proposed contract was submitted to Mr. Senn, who refused to sign it because of article III; a series of conferences was to no avail (R. 37), and in December, 1935, the Tile Layers Protective Union, Local No. 5, started to picket his premises, which are his home and office, and to follow his truck from his garage to his jobs to ascertain where those jobs were for the purpose of picketing (R. 40-41). The pickets varied in number from two to four, picketed only on working days, and used no violence (R. 63, 64). Senn decided on meeting this economic pressure by counter activities; he

decided to go into the brokerage business and sell tile indiscriminately to any buyers and thereby "wreck" the industry (R. 41, 61, 72-3). In pursuance of this plan he sent letters to contractors and inserted a "blind ad" in the Milwaukee Journal (R. 72-73).

During the period of 1931 to 1935 the tile industry in Milwaukee had been in a very poor condition (R. 76-77, 83, 86), and this condition had been further aggravated by unskilled persons, and others, starting to compete in the trade and going into the contracting business (R. 38, 87). Membership in the tile layers union decreased from 112 in 1929 to 41 in 1935 (R. 90).

It was because of these conditions that the local union adopted the rule which was incorporated in the proposed contract as article III (R. 87, 90). In co-operation with the union at least seven tile contractors, constituting the greater majority of them, entered into the contract. In all of these firms recognized craftsmen who would have been eligible to membership in the union if they were not employers, but who were partners in or owners of the contracting firms, abided by article III of the contract (R. 43, 87).

As to Mr. Senn's qualifications as a skilled craftsman in the tile-laying industry, there is no dispute about the fact that he has fulfilled none of the requirements of the union's by-laws and thus he would not have been eligible to membership in the union in any event. He has not served the required apprenticeship nor pursued the course of study required to entitle him to be recognized as a practical tile setter (R. 66-68). While there is testimony by himself and his employee that his work is satisfactory, the record also shows that the only building contractor who testified as to his skill admitted that he had never seen Senn do what is considered highly skilled or technical work (Old

Record 196-197), and further testimony by veteran members that one with Mr. Senn's limited training and experience could not be considered a practical mechanic (R. 95-96, 100-101). Senn was advised of this during the negotiations with the union and was told that under such circumstances the union could not allow him to work with the tools of the trade, nor, because of union rules, to allow its members to work with him (R. 34, 79, 84).

The defendant unions are allied with the larger International Union, comprising a number of building trades crafts. All these crafts require service as an apprentice before a man may be considered a journeyman craftsman entitling him to do the work of a practical mechanic (Constitution, pages 68, 69, 70).

The Wisconsin Labor Code, Sections 103.51 to 103.63, Statutes of 1935, set out in the appendix, enumerates what is to be considered lawful conduct in labor disputes. Such lawful conduct is defined as including giving publicity and information regarding the existence of a labor dispute, ceasing to patronize or to employ any person or persons, and peaceful picketing and patrolling. The act defines labor disputes, and further provides that restraining orders shall be issued under certain circumstances and for limited periods, and that injunctions shall not be issued except after a hearing had and certain facts found to exist. The facts to be found are:

> (a) That unlawful acts have been threatened or committed and will be executed or continued unless restrained;
>
> (b) That substantial and irreparable injury to complainant's property will follow unless the relief requested is granted;
>
> (c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial

thereof than will be inflicted upon defendants by the granting thereof;

(d) That the relief to be granted does not violate the provisions of section 103.53;

(e) That complainant has no adequate remedy at law; and

(f) That the public officers charged with the duty to protect complainant's property have failed or are unable to furnish adequate protection.

After due trial the Court found that the facts in the instant case established that there existed a labor dispute; that the acts and conduct of respondent union were lawful and in furtherance of such lawful labor dispute, and that the appellant was not entitled to relief. The Court also found that the objects of the union in its dispute with the appellant were as follows (R. 28):

15. "That the tile industry for some years last past has been in a demoralized state because of a lack of building operations; that the defendants and their members have been in competition with nonunion tile setters and helpers in their effort to secure work as a means of livelihood; that for the purpose of enhancing the interests of the defendants and their members, the defendants and their members have found it necessary for the protection of their individual rights in the prosecution of their trade, to require of all employers agreeing to conduct a union shop to agree: 'That no individual, member of a copartnership or corporation engaged in the tile contracting business, shall work with the tools or act as helper, but that the installation of all materials within the classification of tile work shall be done by journeymen members of the Tile Layers Protective Union.'

16. "That the plaintiff, by virtue of his status of an employer and contractor, is not entitled to member-

ship in the defendant unions; that the constitution and rules of the defendant unions require, among other things, that a tile setter shall be a journeyman tile setter who shall have acquired his practical experience by virtue of an apprenticeship, and that such apprenticeship shall, among other things, consist of service as an apprentice of not less than three years; that the plaintiff has not served an apprenticeship as a tile setter in accordance with the rules of the defendant unions."

From these facts it was concluded that in furtherance of such objects:

"1. That a labor dispute exists between the plaintiff and the defendants respecting the unionizing of plaintiff's business on the terms proposed by the defendants; that the plaintiff and defendants are parties to said dispute, and that such dispute is within the definition of a labor dispute, as defined in the Labor Code, Sections 268.18 to 268.29 (now secs. 103.51-103.63), and subsections thereof, of the Wisconsin Statutes.

"2. That it is not unlawful for the defendants, in furtherance of said dispute, to advise, notify or persuade, without fraud, violence or threat thereof, any person or persons, of the existence of said labor dispute; that it is not unlawful for the defendants to give publicity to, and obtain or communicate information regarding the existence of facts (fol. 94) involved in such dispute whether by advertising, speaking, or patrolling any public street or any place where any person or persons may lawfully be, providing said acts are done without intimidation or coercion and without fraud, violence, breach of the peace, or threat thereof.

"3. That the defendants have not indulged in violence or fraud; that because of their statement made by their counsel in open court and in their presence,

that they will not send any more letters to owners, contractors, or architects as hereinbefore referred to, and will not indulge in any of the acts or conduct referred to in said letters, the Court concludes that no unlawful acts will be committed or will be executed or continued.

"4. That the agreement submitted by the defendants to the plaintiff, setting forth terms and conditions prevailing in that portion of the industry which is unionized, is sought by the defendants for the purpose of promoting their welfare and enhancing their own interests in their trade and craft as workers in the industry.

"5. That article III of said agreement is a reasonable and lawful rule adopted by the defendants out of the necessities of the employment within the industry and for the protection of themselves as workers and craftsmen in the industry.

"6. That the plaintiff is not entitled to the relief prayed for in his complaint.

"7. That the above-entitled action be dismissed on its merits without costs."

From such findings an appeal was taken based upon whether (1) the term "labor dispute" was applicable to a situation where the dispute was between members of a union engaged in the same craft or industry and an employer engaged in such trade, craft or industry, and (2) if such dispute existed, were the demands made upon the employer reasonable ones? It was contended that to find a dispute existed, and that the demands made were reasonable, the effect of denying a remedy by way of injunction is to deny the appellant the equal protection of the laws and to deprive him of his property without due process of law. The Wisconsin Supreme Court affirmed the findings of the trial court, and from this decision this appeal was taken.

SUMMARY OF ARGUMENT.

1. The Wisconsin Labor Code does not involve the Fourteenth Amendment; the federal question involved is no longer a substantial one by reason of prior adjudications of this Court.

(a) Limitations on the granting of injunctions are jurisdictional limitations which are within the proper power of the Legislature.

Duplex Printing Press Company v. Deering, 254 U. S. 443;
American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184;
Levering and Garrigues v. Morrin, 71 Fed. (2d) 284 (cert. denied 293 U. S. 595, 79 L. ed. 688);
United Electric Coal Company v. Rice, 80 Fed. (2d) 1 (cert. denied 297 U. S. 714, 80 L. ed. 1000);
Fenske Bros. v. Upholsterers' International Union, 358 Ill. 239, 193 N. E. 112 (cert. denied 79 U. S. ..., ... L. ed. 1682).

(b) The federal question is no longer a substantial one, since it has been decided adversely to the appellant and prior United States Supreme Court decisions.

Truax v. Corrigan, 257 U. S. 312;
Duplex Printing Press Company v. Deering, 254 U. S. 443;
American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184.

(c) This question has also been decided uniformly in the lower state and federal courts.

Levering & Garrigues v. Morrin, 71 Fed. (2d) 284;
Fenske Bros. v. Upholsterers' International Union, 358 Ill. 239, 193 N. E. 112;

Miller Parlor Furniture Company v. Furniture W. I. Union, 8 Fed. Sup. 209;
Cinderella Theater Co. v. Sign Writers' Local Union, 6 Fed. Sup. 164;
Dean v. Mayo, 8 Fed. Sup. 73;
Starr v. Laundry Union, C. C. H. Labor Law Service, page 16841.
Wallace v. International Association of Mechanics, C. C. H. Labor Law Service, page 16846.

2. The findings of both the trial and appellate courts as to the reasonableness and purpose of the demand are findings of fact. Such findings of fact are not within the jurisdiction of this Court for the purposes of review. Under such findings of fact no federal right has been denied to the appellant.

(a) Findings of fact in the state courts are binding unless ascertained to be without support in the evidence, or unless clear error is shown.

Ward & Gow v. Krinsky, 259 U. S. 503, 42 S. Ct. Rep. 529;
Borden Products Co. v. Ten Eyck, 297 U. S. 251;
Thayer v. Spratt, 189 U. S. 346, 23 S. Ct. Rep. 576.

(b) Upon a finding of fact that the peaceful actions of a union are directed to the legitimate objectives and purposes for which working men may organize, the resultant injury if there be one to the employer becomes *damnum absque injuria.*

Truax v. Corrigan, 257 U. S. 312;
Duplex Printing Press Company v. Deering, 254 U. S. 443;
American Steel Foundries v. Tri-City Central Trades Council, supra;

New Jersey Painting Company v. Local 26, 96 N. J. Eq. 632, 126 Atl. 399, 47 A. L. R. 384;
Exchange Bakery & Restaurant v. Rifkin, 245 N. Y. 260.

3. The appellant not having met any of the qualifications set up by the union for a qualified practical mechanic, the terms of the proposed contract are justifiable on that basis alone. Such union rules and regulations are not within the jurisdiction of this Court for the purposes of review.

Mayer v. Journeymen Stone Cutters' Union, 47 N. J. Eq. 519, 20 Atl. 492;
Snow v. Wheeler, 113 Mass. 179;
Carew v. Rutherford, 106 Mass. 114;
New Jersey Printing Company v. Local 26, 96 N. J. Eq. 632, 126 Atl. 399, 47 A. L. R. 384.

ARGUMENT.

I.

THE WISCONSIN LABOR CODE DOES NOT INVOLVE THE FOURTEENTH AMENDMENT; THE FEDERAL QUESTION INVOLVED IS NO LONGER A SUBSTANTIAL ONE BY REASON OF THE PRIOR ADJUDICATIONS OF THIS COURT.

It is the respondent's position that the United States Supreme Court has not jurisdiction in this matter since the Wisconsin Labor Code does not involve the Fourteenth Amendment. Also, the federal question involved is no longer a substantial one. The enactment of the code is within the legitimate exercise of the police power of the state in limiting equitable relief by way of injunction in order to promote the public welfare, safety and morals of society. The limitation of this equitable relief is not meant to be nor is it declared to be an adjudication of the rights of the appellant in an action at law for damages. Set out in the appendix hereto is the report of the House Judiciary Committee on the Norris-LaGuardia Act. At page 60 through 69 there is an extended discussion and citation of authorities as to the rights of Congress to limit the equity jurisdiction of the federal courts. Also, at page 88 of the report of the Senate Judiciary Committee, appearing in the appendix, there is a discussion of the same proposition.

These authorities and suggestions are likewise applicable to the rights of state legislatures in dealing with the equity jurisdiction of state courts. We quote from the decision in the case of **American Furniture Company v. I. B. of T. C. and H. of A.**, 268 N. W. 250 (not yet officially

reported), which was decided at the same time as the instant case, and which is set out in the appendix:

> "• • • It is beyond question that the legislature may change the substantive law and in doing so increase or reduce the subject matter upon which the jurisdiction of courts operate. It may enact a statute creating a crime or repeal such a statute. The first enactment does not increase nor does the latter diminish the jurisdiction of a court. It merely is an exercise of the power of the legislature to declare the public policy of the state and punish offenses against its sovereignty. Unless there is some other constitutional objection, such laws would not be invalid as interferences with the jurisdiction of the courts. When the legislature makes peaceful picketing valid under certain prescribed circumstances it leaves nothing for an injunction to operate upon. The provisions of such a law are substantive in character. They may or may not be unconstitutional on some other ground, but it is certain they are not unconstitutional upon the ground assigned."

A similar jurisdictional question involving the Norris-LaGuardia Act (the federal law, of which the Wisconsin Labor Code is a counterpart) was raised in the case of **Levering & Garrigues v. Morrin et al.**, 71 Fed. (2d) 284 (1934) (C. C. A. [2d]), in which the Court said:

> "Since Congress may curtail this remedy or withdraw the jurisdiction of the District Court, no constitutional rights based upon the withdrawal of remedial rights can be successfully raised, since the litigant never had an absolute constitutional right to have a federal court take jurisdiction."

Certiorari denied in this case in 293 U. S. 595, 79 L. Ed. 688 (1934).

Likewise, similar questions were raised in the case of **United Electric Coal Company v. Rice**, 80 Fed. (2d) 1 (C. C. A. 7th), wherein it was claimed that limiting the power of a federal court of equity to restrain threatened injuries to property is unconstitutional. The Court held:

> "Inasmuch as Congress may take from as well as confer upon inferior federal courts jurisdiction of cases which involve controversies between different states • • • we find no support for a conclusion which would deny validity of this legislation.
>
> "The legislation in question took from district courts jurisdiction of cases involving labor dispute injunction suits between citizens of different states, in certain limited instances, and was within the power of Congress conferred by Article III, Sections 1 and 2, of the United States Constitution."

Certiorari was denied in this case in 297 U. S. 714, 80 L. Ed. 1000 (1935).

In the recent case of **Starr v. Laundry and Dry Cleaning Workers Union** (not yet officially reported, but appearing at page 16841 of the C. C. H. Labor Law Service, decided December 29, 1936), we find this pertinent statement:

> "At all times legislation, prescribing the procedure in cases brought to secure injunction has been recognized as controlling upon the courts. We find support in reasons of public policy why the procedure in labor cases should be different from that to be followed in other cases."

Likewise, in the case of **Fenske Bros. v. Upholsterers International Union**, 358 Ill. 239, 193 N. E. 112, 97 A. L. R. 1318 (Ill.), the Illinois Supreme Court, in discussing the validity of the Illinois Anti-Injunction Act, held such act to be constitutional on the precise procedural question.

Certiorari was denied in this case in 79 U. S. (L. Ed.) 1682, 55 Sup. Ct. 645 (April, 1935).

In the case of **Duplex Printing Press Co. v. Deering**, 254 U. S. 443, this Court had occasion for the first time to consider paragraph 20 of the Clayton Act. This section of the act provides:

> "That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms, or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described in particularity in the application, which must be in writing, and sworn to by the applicant, or by his agent or attorney.
>
> "And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work, or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful or lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peace-

fully assembling in a lawful manner and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States."

The foregoing provisions are limitations upon courts of equity in respect to issuance of injunctions. The Court not only did not invalidate these restrictions, but held that they put into statutory form familiar restrictions upon the granting of injunctions already established, and of general application in the equity practice of the courts of the United States.

We believe that the Court's observations as to the validity of Section 20 of the Clayton Act are herein pertinent; that the "familiar restrictions upon the granting of injunctions already established, and in general application, in the equity practice of the courts of the United States," are valid restrictions and a legitimate exercise of congressional powers not in violation of the Fifth or Fourteenth Amendments to the United States Constitution.

Likewise, in the case of **American Steel Foundries v. Tri-City Central Trades Council**, 257 U. S. 184, this Court again considered Section 20 of the Clayton Act, saying:

> "It is clear that Congress wished to forbid the use by Federal Courts of their equity arm to prevent peaceable persuasion by employees, discharged, or **expectant**, in **promotion of their side of the dispute**, and to secure them against judicial restraint in obtaining or communicating information in any place where they might lawfully be. This introduces no new principle into the equity jurisprudence of those courts. It is merely declaratory of what was the best policy always. Congress thought it wise to stabilize

this rule of action and render it uniform." (Emphasis ours.)

The application of the principles of law to Section 20 of the Clayton Act and Sections 103.51 to 103.63 of the Wisconsin Statutes are essentially the same. Both Section 20 of the Clayton Act and Sections 103.51 to 103.63 of the Wisconsin Statutes limit or restrict the use of injunctions in labor disputes after defining what such disputes are; and both enumerate actions in connection with such labor dispute that are deemed to be lawful acts in restraint of which a court of equity may not issue an injunction.

While it is true that in the **Duplex** and **American Steel Foundries** cases certain injunctions were allowed to issue, such injunctions were issued only because the Court determined that under the Clayton Act the provisions did not extend as far as they were claimed to by the unions, and the conduct complained of consisted of violence and secondary boycotting. The Court did not declare an extension of the act to other disputes "free from fraud, violence, breach of the peace or threat thereof" [Wisconsin Statutes, 103.53 (c)] would result in unconstitutional legislative power, but based its decisions on what it considered to be a correct construction of the Clayton Act.

In the instant case, the Wisconsin Supreme Court, in determining the legislative intent, concluded that the term "labor dispute," as used and defined in the Wisconsin Labor Code, included disputes between unions composed of members engaged in the same craft, trade or industry of the employers and employers engaged in such craft or industry. This construction was based not only upon what the Court concluded to be the legislative intent, but also upon the wording of the Wisconsin statute, which is broader than the terms of Section 20 of the Clayton Act

in its definitions of labor disputes and those who are participants therein. As pointed out in the decision of the Wisconsin Supreme Court in the case of **American Furniture Company v. I. B. of T. C. and H. of A. Chauffeurs, Teamsters and Helpers of Local No. 200 of Milwaukee et al.**, supra, the inclusion in the Wisconsin statute [section 103.62 (3)] of the language "regardless whether or not disputants stand in the proximate relation of employer and employee" was meant to overcome the restrictive language of the Clayton Act as construed in the **Duplex Case**, and when construed with other pertinent sections of the statute clearly covers the situation presented in this case, that is, a dispute between an employer in a particular trade, craft or industry and an association of employees engaged in the same trade, craft or industry, whose wages, hours and working conditions are affected by that employer's practices. This proposition was affirmed in the case of **American Steel Foundries v. Tri-City Central Trades Council**, 257 U. S. 184, at page 209:

> "• • • It is thus probable that members of the local unions were looking forward to employment when complainant should resume full operation, and **even though they were not ex-employees within the Clayton Act, they were directly interested in the wages which were to be paid.**
>
> "Is interference of a labor organization by persuasion and appeal to induce a strike against low wages, under such circumstances, without lawful excuse and malicious? We think not. Labor unions are recognized by the Clayton Act as legal when instituted for mutual help and lawfully carrying out their legitimate objects. They have long been thus recognized by the courts. They were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was de-

pendent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer. They united to exert influence upon him and to leave him in a body, in order, by this inconvenience, to induce him to make better terms with them. They were withholding their labor of economic value to make him pay what they thought it was worth. **The right to combine for such a lawful purpose has, in many years, not been denied by any court.** The strike became a lawful instrument in a lawful economic struggle or competition between employer and employees as to the share or division between them of the joint product of labor and capital. **To render this combination at all effective, employees must make their combination extend beyond one shop. It is helpful to have as many as may be in the same trade in the same community united, because, in the competition between employers, they are bound to be affected by the standard of wages of their trade in the neighborhood. Therefore, they may use all lawful propaganda to enlarge their membership, and especially among those whose labor at lower wages will injure their whole guild.** It is impossible to hold such persuasion and propaganda, without more, to be without excuse and malicious. The principle of the unlawfulness of maliciously enticing laborers still remains, and action may be maintained therefor in proper cases; but to make it applicable to local labor unions in such a case as this seems to us to be unreasonable." (Emphasis ours.)

In the exercise of the appellate jurisdiction of the Federal Supreme Court over state courts the former court is

bound by the construction of a state law adopted by its court of last resort.

Ward & Gow v. Krinski, 259 U. S. 503, 42 Sup. Ct. Rep. 529, 66 L. Ed. 1033;
Thornton v. Duffy, 254 U. S. 361, 41 Sup. Ct. Rep. 137, 68 L. Ed. 304;
Quong Ham Wah Co. v. Industrial Accident Commission, 253 U. S. 445, 41 Sup. Ct. Rep. 337, 65 L. Ed. 723;
Faircomb v. Denver, 252 U. S. 7, 40 Sup. Ct. Rep. 271, 64 L. Ed. 424;
Guarantee Trust Co. v. Blodgett, 287 U. S. 509, 53 Sup. Ct. Rep. 244, 77 L. Ed. 463;
Hartford Accident & Indemnity Co. v. N. O. Nelson Mfg. Co., 291 U. S. 352, 54 Sup. Ct. Rep. 392, 78 L. Ed. 840.

The Wisconsin Act, as construed by the Wisconsin courts, enlarges the class of disputes in which the issuance of an injunction is limited, but the statute is still confined to disputes arising out of the rights of laboring men to pursue peacefully the objects for which they organize, free from judicial restraint. So the Wisconsin Labor Code still remains, in effect and purpose, the same type of legislation as Section 20 of the Clayton Act, and such legislation has never before been considered by this Court as a violation of the Fifth or Fourteenth Amendments (**Tri-City case**, supra). There are many cases in the federal and state courts which have adopted the same construction as the Wisconsin Supreme Court did in connection with both the Norris-La Guardia Act and state anti-injunction acts. Some of the cases which have adopted this construction are:

Levering & Garrigues v. Morrin, 71 Fed. (2d) 284 (1934, C. C. A. 2nd) (certiorari denied);

Miller Parlor Furniture Co. v. Furniture W. I. Union (District Court N. J.), 8 Fed. Supp. 209;
Cinderella Theatre Co. v. Sign Writers Local Union (D. C. Mich.), 6 Fed. Supp. 164;
Dean v. Mayo (Dist. Ct. La.), 8 Fed. Supp. 73;
Fenske v. Upholsterers International Union, 358 Ill. 239, 193 N. E. 112 (certiorari denied);
Starr v. Laundry & Dry Cleaning Workers Union (Oregon Sup. Ct., Dec. 29, 1936) (reported in C. C. H. at page 16841) (not yet officially reported); and
Wallace v. International Association of Mechanics, a companion case to Starr v. Laundry Workers, supra, C. C. H., page 16846.

In **Levering & Garrigues v. Morrin,** supra, the Court said:

> "We think that the relief granted in the decree appealed from is in violation of the above statute (Norris-La Guardia Act). The case grows out of a labor dispute as defined in Section 113 (c) and is a controversy between members of an association of employers and members of an association of employees engaged in the same industry [Sec. 113 (a), (c)]. The appellees were seeking to arrange terms or conditions of employment."

In the **Miller** case, supra, the Court said:

> "However, I am convinced, after carefully reading the aforesaid act of Congress, that it is intended to apply to just the situation here presented; that a labor dispute may arise by reason of the desire of a labor organization to unionize any factory in its line of business, and a Federal Court may not, against the effort of the union to accomplish its purpose, interfere with it or its members 'giving publicity to existence of, or the facts involved in, any labor dispute,

whether by advertising, speaking, patrolling, or by any other method not involved in fraud or violence' [29 U. S. C. A., Sec. 104 (e)]."

In the **Cinderella** case, supra, the Court held that a controversy to replace a nonunion employee by a union employee, none of the members of which union were employed by the employer, was a labor dispute within the Norris-La Guardia Act because

> "By the express terms of the statute, it is none the less a 'labor dispute' because of the fact that none of the officers or members of the defendant union have any contractual relations with the plaintiffs, and none of the 'disputants stand in proximate relation of employer and employee.' If the applicability of the statute were otherwise doubtful, such doubt would be removed by a consideration of the following language in the report of the House Committee on the Judiciary (H. R. Report 669, 72d Congress, First Session) favorably reporting the bill (H. R. 5315) a few days before its passage: • • •"

In the **Wallace** case, supra, referring to the Oregon Anti-Injunction Law, the Court said:

> "• • • The definition of a labor dispute is so broad and comprehensive that it undoubtedly extends the scope of the Clayton Act as interpreted by the United States Supreme Court by placing a greater restriction upon courts in the matter of issuing injunctions. We are convinced that the immunity from injunctions clearly extends to disputes between persons engaged in the same industry or craft who have a 'direct or indirect' interest therein, and is not limited to a dispute between an employer and his immediate employees. The Act provides that an association of employees has an interest in a labor dispute,

> **'regardless of whether or not the disputants stand in the proximate relation of employer and employee.'** If there were any doubt as to the intention of Congress in enacting the Norris-La Guardia Act it ought to be removed by the following language on the Report of the House Committee on the House Judiciary favoring the passage of the bill: • • •.'' (See appendix.) (Emphasis ours.)

The appellant, however, insists that to apply the provisions of the Code to the facts in the instant case is to deprive him of his property without due process of law, and to deny to him the equal protection of the laws. In support of this position reliance is placed on the cases of **Truax v. Corrigan,** 257 U. S. 312, and **Coppage v. Kansas,** 236 U. S. 1.

The **Truax** decision rested on two propositions: (1) The acts alleged in the complaint and admitted by demurrer were acts which were tortious in and of themselves—their tortious character lay not in the purposes toward which they were directed, and (2) since those acts were tortious it was held that to deprive the employer of a remedy by injunction against such tortious acts was to deprive the employer of equal protection of the laws, and to deprive him of his property without due process of law. The United States Supreme Court held that where certain actions were tortious per se it would be a violation of the Fourteenth Amendment and not a valid exercise of the state police power to deny to the complainant its right of remedy by injunction. The Court did not hold, however, that where labor disputes are involved an act restricting the power of courts to issue injunctions against peaceful acts was an unconstitutional deprivation of property, or a denial of equal protection of the laws.

In the instant case, after a trial on the merits, the Court

found that the only tortious acts consisted of a proposed secondary boycott, which the defendants, through their counsel, agreed to withdraw, and to cease further activities in that direction. Since the act requires that the Court shall be satisfied that the unlawful acts complained of "will be executed or continued unless restrained" (Sec. 103.56, Wis. Stats.), the Court, both under the act and under the general principles of equity, being satisfied that such acts will not be continued, did not issue an injunction. This ruling of the trial court was affirmed by the court of last resort in Wisconsin, Justice Fairchild saying:

> "It appears when issue was first joined between the parties, considerable spirit was manifested on both sides, and evidently acts occurred calculated to intimidate appellant and bring about a secondary boycott. The trial court said:
>
> > " 'That because of their statements made by their counsel in open court and in their presence, that they will not send any more letters to owners, contractors, or architects, as hereinbefore referred to, and will not indulge in any of the acts or conduct referred to in said letters, the court concludes that no unlawful act will be committed or will be executed or continued.'
>
> "The discretion of the trial court in determining that there is no occasion for a restraining order in the particular suggested is well within the scope of duties imposed on it. We are of the opinion that no occasion exists for overruling the lower court in this particular, and in other respects the judgment is approved."

Also, in the case of **United Chain Theatres v. Philadelphia M. P. M. O. Union**, 50 Fed. (2d) 189, in referring to the issuance of an injunction against certain acts, which

acts counsel for the defendants advised the Court would not be continued, the Court said:

> "Specifically, in the regard to the matter just referred to, my finding is that the conduct criticized has been discontinued, and there is no reason to apprehend that it will be resumed."

It must also be pointed out that the case of **Coppage v. Kansas**, supra, relied upon by the appellant to confer jurisdiction on this Court, is one involving a state statute which imposed criminal penalties on employers and did not involve anti-injunction statutes patterned after the Norris-LaGuardia Act.

As was said in the case of **Starr v. Laundry and Dry Cleaning Workers**, supra:

> "The **Coppage case** construes laws making it a criminal offense for an employer to enter into a contract with an employee containing a clause to the effect that the employee will refrain from joining a labor union during the term of his employment. The question of striking by employees is not involved. Neither is the question of picketing nor the propriety or legality of statutory provisions prescribing procedure in cases wherein injunctive relief is sought.
>
> "To attempt to impute criminality to an act that is sanctioned by the Constitution is obviously different from prescribing a special procedure to be followed to obtain injunctive relief in a special class of cases."

In this connection we also refer the Court to the case of **Texas & N. O. R. Co. v. Brotherhood of Railway Clerks**, 281 U. S. 548, 74 L. Ed. 1034. This is the most vital decision on the subject of constitutionality of labor legislation since the case of **Truax v. Corrigan**, supra. In the light of this decision, decided May 26, 1930, all legisla-

tion on the subject of labor disputes where constitutional questions are involved, must be approached with a recognition that the **Adair** and **Coppage** cases were effectively limited, if not made entirely innocuous. The Court said:

> "The legality of collective action on the part of the employees in order to safeguard their proper interests, is not to be disputed. It has long been recognized that employees are entitled to organize for the purpose of securing with redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work.
>
> American Steel Foundries v. Tri City Central Trades Council, 257 U. S. 184, 209, 66 L. ed. 189, 199, 27 A. L. R. 360, 42 Sup. Ct. Rep. 72.
>
> • • • • • • •
>
> "Thus the prohibition by Congress of interference with the selection of representatives for the purpose of negotiation and conference between employers and employees instead of being an invasion of the constitutional right of either was based on the recognition of the rights of both. The petitioners invoked the principles declared in Adair v. U. S., 208, 161, 52 L. ed. 436, 28 Sup. Ct. Rep. 277, 13 Ann. Cas. 764, and Coppage v. Kansas, 236 U. S. 1, 59 L. ed. 441, L. R. A. 1915 C 960, 35 Sup. Ct. Rep. 240, but these decisions are inapplicable. The Railway Labor Act of 1926 does not interfere with the normal exercise of the right of the carrier to select its employees or to discharge them. The statute is not aimed at this right of the employers, but at the interference with the right of employees to have representatives of their own choosing. As the carriers subject to the act have no constitutional right to interfere with the freedom of employees in making their selections, they cannot complain of the statute on constitutional grounds."

Thus, by a unanimous court, this Court has committed itself to the recognition of the rights of organized labor to a degree which, as a matter of policy and legal principles, is applicable to the case at bar.

II.

THE FINDINGS OF BOTH THE TRIAL AND THE APPELLATE COURT AS TO THE PURPOSES AND REASONABLENESS OF THE DEMAND ARE FINDINGS OF FACT. SUCH FINDINGS ARE NOT REVIEWABLE BY THIS COURT. UNDER SUCH FINDINGS OF FACT NO FEDERAL RIGHT HAS BEEN DENIED TO THE APPELLANT.

However, it is asserted here that, while the Act standing alone may be constitutional, it is invalid if construed so as to apply to the facts in the instant case. It is asserted that the demand made upon the appellant is unreasonable, and that to refuse to enjoin the otherwise legal acts by the union directed to the enforcement of such demand is to deprive the appellant of his constitutional rights.

It is the respondents' contention that the findings of both the trial and appellate courts as to the reasonableness and purposes of their demand being findings of fact, it is not within the purview of the jurisdiction of this Court to review such findings. The findings of fact are set out in the transcript of the record at pages 24 to 29. We take the opportunity to set out what we consider to be the most pertinent paragraphs thereof:

> "12. That the agreement entered into by the defendants with other tile contractors in the city and county of Milwaukee is a collective agreement governing wages, hours and working conditions for their

members who are journeymen and journeymen helpers recognized as craftsmen in accordance with the Constitution of the defendant organizations.

"13. That all contractors who have entered into such agreement with the defendant unions are classed by the defendants as union contractors, and that all contractors who have refused to enter into said agreement are classed by the defendant unions as nonunion contractors.

"14. That by virtue of the agreement between the defendant unions and the union contractors, the defendant unions and their members secure advantages in wages, hours and working conditions in maintaining a standard of wages and working conditions satisfactory to the defendants and their membership; that the wages paid to the defendants and their members by union contractors have for some time been higher than the wages paid by the plaintiff to his employees.

"15. That the tile industry for some years last past has been in a demoralized state because of a lack of building operations; that the defendants and their members have been in competition with nonunion tile setters and helpers in their effort to secure work as a means of livelihood; that for the purposes of enhancing the interests of the defendants and their members, the defendants and their members have found it necessary for the protection of their individual rights in the prosecution of their trade, to require of all employers agreeing to conduct a union shop to agree: 'That no individual, members of a copartnership or corporation engaged in the tile contracting business shall work with the tools or act as helper, but that the installation of all materials within the classification of tile work shall be done by journeymen members of the Tile Layers Protective Union.'

"16. That the plaintiff, by virtue of his status of an employer and contractor, is not entitled to member-

ship in the defendant unions; that the Constitution and Rules of the (fol. 93) defendant unions require among other things that a tile setter shall be a journeyman tile setter who shall have acquired his practical experience by virtue of an apprenticeship, and that such apprenticeship shall, among other things, consist of service as an apprentice of not less than three years; that the plaintiff has not served an apprenticeship as a tile setter in accordance with the rules of the defendant unions.

"17. That the picketing has been peaceful, without violence, and without any unlawful acts."

We also point out that the decision of the Wisconsin Supreme Court, appearing in the transcript of record, pages 116 to 122, affirms these findings at page 120:

"The demand here by the unions is for the appellant to conform to a definite wage scale prevalent on union jobs, and to conform to a fixed number of hours approved by the union. They also insist that he conform to the rules of apprenticeship and other working conditions prevalent in the industry where union rules prevail. The requirement that the employer personally refrain from working with the tools of the trade is important and vital to the craftsmen affiliated with defendant unions, because the practices sought to be prevented can so readily affect wages and hours of labor. It is pointed out by respondent that the membership in the union has decreased during the depression years, and that as a necessary requisite for a proper existence and livelihood, these craftsmen find it necessary to require employers to comply with the terms of Article III. Appellant's method of conducting his business brings into the situation a direct attack by him upon the means relied upon by the unions to protect their scale of wages, hours and working conditions against the cutting of prices and lengthening of hours of work."

That the above are findings of fact and not conclusions of law cannot be disputed. As was held in the case of **W. A. Snow Iron Works v. Chadwick**, 227 Mass. 382, L. R. A. 755, 116 N. E. 801, the object or motive of a strike is a question of fact.

We believe that it is axiomatic that the United States Supreme Court will not disturb the findings of fact of the State Supreme Court, and that such findings are conclusive upon the Court; that this Court will not entertain jurisdiction to determine a case which is based upon such findings.

Findings of fact by a state trial court that the inspection of gasoline provided for by state statute protects the community from frauds and promotes the public safety, are accepted as conclusive by the Federal Supreme Court on writ of error. **Pure Oil Co. v. Minnesota**, 248 U. S. 158, 39 Sup. Ct. Rep. 35, 63 L. Ed. 180.

Findings of fact are binding unless ascertained to be without support in evidence. **Ward & Gow v. Krinski**, 259 U. S. 503, 42 Sup. Ct. Rep. 529, 66 L. Ed. 1033.

Findings of a court supported by substantial evidence will not be disturbed on appeal. **Borden Products Co. v. Ten Eyck**, 297 U. S. 251, 56 Sup. Ct. Rep. 453, 80 L. Ed. 669.

Findings of fact in which two lower courts concur will be accepted by the Supreme Court unless clear error is shown:

Texas & N. O. R. Co. v. Brotherhood of Railway & S. S. Clerks, 281 U. S. 548, 50 Sup. Ct. Rep. 422, 74 L. Ed. 1034;

U. S. v. Commercial Credit Co., 286 U. S. 63, 52 Sup. Ct. Rep. 46, 76 L. Ed. 978;

Continental Illinois National Bank & Trust Co. v. Chicago R. I. & P. R. Co., 294 U. S. 648, 55 Sup. Ct. Rep. 595, 79 L. Ed. 110.

If it appears that the decision of the federal question was so plainly right as not to require argument, the writ should not be allowed. **Re Spies**, 123 U. S. 131, 7 Sup. Ct. Rep. 22, 31 L. Ed. 80; **Re Bordman**, 169 U. S. 39, 18 Sup. Ct. Rep. 291, 42 L. Ed. 653.

The Federal Supreme Court upon a writ of error to a state court has no right to review the decision upon the ground that the finding was against the evidence or the weight of evidence. **Thayer v. Spratt**, 189 U. S. 346, 23 Sup. Ct. Rep. 576, 47 L. Ed. 845.

Whatever was a question of fact in the state court is a question of fact on writ of error from the Federal Supreme Court to that court. **Hanley v. Donoghue**, 116 U. S. 1, 6 Sup. Ct. Rep. 242, 29 L. Ed. 535.

The findings of fact are conclusive upon the Federal Supreme Court on writ of error to a state court, in ordinary cases other than those arising under the contract clause of the Federal Constitution, unless there is a ground for insistence that a federal right has been denied as a result of a finding that is without support in the evidence. **Interstate Amusement Co. v. Albert**, 239 U. S. 560, 36 Sup. Ct. Rep. 168, 60 L. Ed. 439.

A finding of fact by an inferior state court affirmed in the highest court of that state by a divided court is conclusive on the Federal Supreme Court in reviewing a judgment of the highest state court. **Minneapolis Railway Co. v. Minnesota**, 193 U. S. 53, 24 Sup. Ct. Rep. 396, 48 L. Ed. 648.

It is true that in the **Truax** case the United States Supreme Court was held to have the right to examine the facts and to determine whether the findings are without or with substantial support. But it must be remembered that in that case the defendants demurred to the complaint, thereby admitting the truth of the alleged facts; and the Court found that the acts which were admitted by demurrer were illegal per se, having consisted of "libelous attacks" and "abusive epithets." In that case it was held that the undisputed facts were necessary to a determination of the issue as presented, and it was apparent that the Supreme Court of Arizona ignored the admitted facts in coming to its conclusion. But in the instant case a trial was had on the merits. The Court found that those acts which were questionable would no longer be persisted in; all other acts of respondents were associated with picketing, and as to those acts the Court found that "the picketing has been peaceful, without violence, and without any unlawful acts."

It is apparent from the record and the decision that the facts relating to the time and manner of picketing are not issues in this case. The issues in the appellate court and the decision were confined to consideration of whether the peaceful picketing was to be free from injunctive restraint in view of the type of demand made upon the appellant.

The proper answer to this question rested upon a determination of whether the acts arose out of a malicious desire to interfere with plaintiff's right to work, or whether they were reasonably directed to the objects and purposes for which laboring men are allowed to organize. The Court's finding that the latter was the purpose is not attacked or disputed. It is the appellant's position that if acts in furtherance of respondents' rights affect adversely his right to work, and to conduct his business as he sees

fit, then respondents' conduct is per se illegal. Such position, of course, is utterly inconsistent with the prior adjudications of this Court.

In the **Truax, Duplex** and **Tri-City cases** this Court affirmed the proposition that peaceful picketing and persuasion, when directed toward the legitimate objectives and purposes for which working men organize, and when conducted in a legal and orderly manner, are properly free from restraint. In the absence of unlawful means it is the purpose toward which the organization's activities are directed that must be determined. If such purposes and objectives bear no direct relationship to the needs of the workingmen and to improve their standards of living, wages, hours and conditions of employment, then their actions may properly be restrained. However, if the purposes are directed towards improvement of working conditions, then the peaceful activities are lawful, and the resultant hardships, if any, to the employer become damnum absque injuria.

In the instant case the Supreme Court of Wisconsin reaffirmed this proposition (R. 120-122):

> "The respondents, by the use of the practice of picketing, seek to induce the appellant to abandon his methods and to conform to the union rules. The distinctions between one engaged in the tile setting business and one working as a journeyman or helper is apparent, and if the proposed contract is entered into by appellant, he will bind himself to respect the union classifications and distinctions. Appellant has declined to sign the suggested contract unless there be eliminated therefrom the provisions which require him to desist from working with his tools and his helping generally in the work of installing material. Respondents insist that the particular rule to which ap-

pellant objects is one in the furtherance of the legitimate interests of the members of the unions. In view of our decision in the American Furniture Co. case, supra, and the cases there analyzed in the opinion written by Mr. Justice Wickhem, it is apparent that, under the laws of Wisconsin, where the primary purpose of the acts complained of is to protect and improve the condition of those whom the unions represent, such action is justifiable, because it tends to promote the welfare of the members of the union engaged in the same craft. There is no effort to induce or compel the appellant to do any unlawful thing. If it be assumed that appellant cannot operate his business successfully upon the conditions insisted upon by the respondents, still no right of appellant now protected by law is invaded by respondents' efforts to bring appellant's business to union standard. American Furniture Co. v. I. B. of T. C. and H. of A. Chauffeurs, Teamsters and Helpers General Local No. 200 of Milwaukee, supra, and cases there cited. No question exists as to appellant's right to conduct a non-union shop under any terms he chooses. An economic contest has developed. Each of the contestants is desrious of the advantage of doing the business in the community where he or they operate. He is not obliged to yield to the persuasion exercised upon him by respondents.

"The Legislature, in outlining the public policy of this state, has precluded him from an appeal to the courts for assistance until some unlawful act has become imminent, or something has occurred to start in motion the administration of equity rules, or the performance of the duties of policing. The respondents do not question that it is appellant's right to run his own business and earn his living in any lawful manner which he chooses to adopt. What they are doing is asserting their rights under the acts of the Legislature for the purpose of enhancing their opportunity

to acquire work for themselves and those whom they represent. **The nature of the controversy is one in which the court and law-enforcing officers can have no interest other than to preserve the equality of each contender before the law, and to require that each refrain from doing any unlawful act. Courts, though differing as to the allowable scope, pretty generally agree that picketing is a legitimate means of economic coercion, if it is confined to persuasion and is free of molestation or threat of physical injury or annoyance.** Frankfurter & Green, The Labor Injunction, p. 31.

"The respondents' act of peaceful picketing is a lawful form of appeal to the public to turn its patronage from appellant to the concerns in which the welfare of the members of the union is bound up. As stated by respondents' counsel in their brief, **'the public is free to accept or reject the appeal and the plaintiff is free to perform all work he can get in whatever manner he wishes to perform it.'** He may work long hours. He may bid for contracts at a low figure based on low wages for himself and on long hours. In the judgment of respondents, his conduct in this respect affects their opportunity of maintaining a standard of better wages, regulated hours, and improved working conditions, and the collision of the two sets of rights, the one in appellant, the other in the respondents, creates a labor dispute within the definition of the code (St. 1935, Secs. 103.51-103.63). Each appeals to public opinion. If the trade turns from one to the other as a result of this dispute, the injury is incidental, injuria absque damno." (Emphasis ours.)

This has always been the judgment of the United States Supreme Court, and has always been the view, with very few exceptions, of the great majority of states and lower federal courts. We refer the Court to the very extensive

note appearing in **71 L. Ed. 248**, in connection with the case of **Kansas v. Dorchy**, indicating that the following are proper and legitimate demands of workingmen's associations and bear direct and reasonable relationship to the purposes for which they are allowed to organize:

Payment of wages during working hours; rates of wages payable by outside contractors; hours of labor; statement of working records; amount of work required; piecework; enforcement of contract rights; arbitration; method of enforcing agreements; enforcing negotiations; retention of obnoxious employees; number of apprentices; amount of help to be employed; reinstatement of employees; closed shop; collective bargaining. Of course, these are not all.

As was stated in the case of **New Jersey Painting Company v. Local 26**, 96 N. J. Eq. 632, 126 Atl. 399, 47 A. L. R. 384:

> "Economically, the conclusion reached by the lower court confuses the possible or probable effect of the defendants' action upon the employers with the defendants' rights. The law gives the defendants a right to sell their labor to whom they please, when and under such conditions as they may fix, individually or in combination. They may make rules and regulations passed in good faith, providing for what they deem to be an economic advantage to themselves. If in the enforcement of such rules and regulations they violate no law, but act solely for the declared purpose, the courts ought not and cannot legally enjoin them from such concerted action, simply because such action may affect some employers. • • •"

And in **Exchange Bakery & Restaurant v. Rifkin**, 245 N. Y. 260:

> "The purpose of a labor union to improve the con-

ditions under which its members do their work, to increase their wages, to assist them in other ways, may justify what would otherwise be a wrong. So would an effort to increase its numbers and to unionize an entire trade or business. It may be as interested in the wages of those not members, or in the conditions under which they work, as in its own members because of the influence of one upon the other. All engaged in a trade are affected by the prevailing rate of wages. All, by the principle of collective bargaining. Economic organization today is not based on the single shop. Unions believe that wages may be increased, collective bargaining maintained, only if union conditions prevail, not in some single factory, but generally. That they may prevail, it may call a strike and picket the premises of an employer with the intent of inducing him to employ union labor. And it may adopt either method separately. Picketing without a strike is no more unlawful than a strike without picketing. Both are based upon a lawful purpose. Resulting injury is incidental and must be endured."

The question then is one of fact, to be determined by the triers of fact in the state courts, whether by judge or jury. In the instant case the Court has found:

1. That the means used were peaceful and lawful and without fraud, violence, or breach of the peace, and

2. That those lawful acts were directed toward the proper protection of the members' legitimate interests.

Under such findings, fully supported by the evidence, both under the law as it existed prior to the adoption of a labor code, and under the labor code, the appellant here is not entitled to the injunctive relief which was sought.

It is apparent, then, that this appeal is now sought and the jurisdiction of this Court is now invoked in order that

this Court make findings of fact as to motives and purposes contrary to the findings in the state courts. We must respectfully submit that such determination is not the proper function of this Court, and that the record is not now subject to such attack. The findings were made after due and proper trial, all the facts having been submitted and litigated. Such findings are now binding and not subject to review.

III.

SINCE IT IS ADMITTED THAT THE APPELLANT IS NOT A QUALIFIED CRAFTSMAN ACCORDING TO THE UNION RULES AND CONSTITUTION AND WOULD NOT BE ENTITLED TO MEMBERSHIP IN THE UNION, THE FURTHER RULE THAT UNION CRAFTSMEN MAY NOT WORK WITH NONUNION OR UNQUALIFIED CRAFTSMEN JUSTIFIES THE TERMS OF THE PROPOSED CONTRACT. SUCH UNION RULES AND REGULATIONS ARE NOT WITHIN THE JURISDICTION OF THIS COURT FOR THE PURPOSES OF REVIEW.

There is another reason why the Court should not take jurisdiction in this case; that is, the appellant was unqualified to work with the respondent union members because of a rule of the union which provides that:

> "Members of the I. U. shall not accept employment with a contractor who works with the tools of the trade unless said contractor is a practical bricklayer, stonemason, cement mason, plasterer, marble mason, tile setter, mosaic or terrazzo worker.
>
> "This section shall be inserted in all subordinate unions' by-laws." (Article XX, Sec. 6, Constitution and Rules of Order.) (R. 39.)

A "practical tile setter" is one who has served an apprenticeship as provided by the union constitution and by-laws. The above provision was asserted by the respondents as being a pertinent issue in the case (R. 39, 66, 67, 77, 79). It was stated unequivocally that under no circumstances could they permit the members to work with Senn, because he was not a qualified craftsman. It was not denied by appellant that he had not served the appranticeship or received the training required by the by-laws of the union, which apprenticeship and training the union deemed necessary before one could be considered a qualified, skilled craftsman or a competent mechanic so as to permit union members to work with him. As a matter of fact, counsel for the appellant stipulated to this effect (R. 68).

With reference to this question the trial court made findings of fact as follows:

> "16. That the plaintiff, by virtue of his status of an employer and contractor, is not entitled to membership in the defendant unions; that the Constitution and Rules of the defendant unions require among other things that a tile setter shall be a journeyman tile setter who shall have acquired his practical experience by virtue of an apprenticeship, and that such apprenticeship shall, among other things, consist of service as an apprentice of not less than three years; that the plaintiff has not served an apprenticeship as a tile setter in accordance with the rules of the defendant unions."

The Supreme Court of the State of Wisconsin, in affirming the decision of the trial court, said:

> "• • • The demand here by the unions is for the appellant to conform to a definite wage scale prevalent

on union jobs, and to conform to a fixed number of hours approved by the union. **They also insist that he conform to the rules of apprenticeship and other working conditions prevalent in the industry where union rules prevail.** The requirement that the employer personally refrain from working with the tools of the trade is important and vital to the craftsmen affiliated with defendant unions, because the practices sought to be prevented can so readily affect wages and hours of labor. It is pointed out by respondent that the membership in the union has decreased during the depression years, and that as a necessary requisite for a proper existence and livelihood these craftsmen find it necessary to require employers to comply with the terms of Article III. Appellant's method of conducting his business brings into the situation a direct attack by him upon the means relied upon by the unions to protect their scale of wages, hours and working conditions against the cutting of prices and lengthening of hours of work." (Emphasis ours.)

It has been the consistent holding of the lower courts that since labor unions have the right to make rules governing their trade and for the benefit of their craft, they have the right to set up qualifications for membership, and they can make rules for the admission of new members and restrict the membership as may best promote their interests. In adhering to apprenticeship qualifications the union is not arbitrary or capricious. The rules relating to apprenticeship are the result of a long and wide experience in that particular field. The conclusion drawn from this experience and knowledge was that certain training is necessary in order to fully qualify a man to be a skilled mechanic. The work of practical tile setting requires a high degree of skill. This skill can be acquired

only after many years of apprenticeship, training and observation of the actual work of a competent craftsman. We refer the Court to the testimony appearing at page 95 and pages 100 to 102 of the record. Apprenticeship statutes and rules are the oldest recognized method of regulation contributing to the maintenance of fair wage standards. A three-year term of apprenticeship in any of the skilled crafts in the building trades has been a requirement for over half a century. Generally, the apprenticeship rule has been recognized and enforced in England since 1688. Webb, History of Trade Unionism, pages 42 and following.

In **Mayer v. Journeymen Stone Cutters Union**, 47 N. J. Eq. 519, 20 Atl. 492, a case involving an action brought by two individuals for membership in a union, it was said:

> "These organizations are formed for purposes mutually agreed upon. Their right to make by-laws and rules for the admission of members and the transaction of business is unquestionable. They may require such qualifications for membership and such formalities for election as they choose. They may restrict membership to original promoters or limit the number to be thereafter admitted. The very idea of such organizations is association mutually acceptable, or in accordance with regulations agreed upon; a power to require the admission of a person in any way objectionable to the society is repugnant to the scheme of its organization. While courts have interfered to inquire into and restrain the action of such societies in the attempted exclusion of persons who have been regularly admitted to membership, no case can, I think, be found where the power of any court has been exercised, as sought in this case, to require the admission of any person to original membership in any such voluntary association. Courts exist to protect rights, and where the right has once attached

they will interfere to prevent its violation, but no person has any abstract right to be admitted to such membership; that depends solely upon the action of the society, exercised in accordance with its regulations, and until so admitted no right exists which the courts can be called upon to protect or enforce.

* * * * * * *

"These considerations result in the conclusion that this court has no jurisdiction to grant the relief prayed for, and that the bill must be dismissed."

In the case of **Snow v. Wheeler**, 113 Mass. 179, the Court quotes approvingly from the earlier case of **Carew v. Rutherford**, 106 Mass. 1, 14, wherein it was said:

"Every man has a right to determine what branch of business he will pursue, and to make his own contracts with whom he pleases and on the best terms he can. * * * He may refuse to deal with any man or class of men, and it is no crime for any number of persons, without an unlawful object in view, to associate themselves together and agree that they will not work for or deal with certain men or classes of men, or work under a certain price, or without certain conditions."

In the **Snow** case, supra, the Court further says:

"In the case at bar there is no evidence offered by the documents submitted to us that the purposes of this association are unlawful by the rules stated. Unlawful coercion certainly does not appear to be intended, and the right of the members to instruct whom they choose in the mysteries of their trade cannot be denied. The case presented is not one where there is evidence to justify us in finding that the objects and purposes of the association are fraudulently and colorably declared as a cover for a secret unlaw-

ful agreement of its members. It will be time enough to deal with such a case when it arises,"

In the case of **N. J. Painting Co. v. Local 26**, 96 N. J. Eq. 632, 126 Atl. 399, 47 A. L. R. 384, it was held that a clause in the constitution of a labor union which provides that "where there is a difference between the wage scale of two cities, all members employed upon a job in one of the two cities by an employer from the other • • • shall receive the higher of the two wage scales," is not illegal as creating an unfair discrimination or an unfair restraint of trade. The Court held that such clause may be enforced by a voluntary combination since the prime object of the rule is to establish a standard of wages.

As to the rights of an organization of laboring men to strike and picket because there are nonunion men working on the job, or because the doing of certain work by certain men is in violation of union rules, there can be no question. In **Pickett v. Walsh**, 192 Mass. 572, 78 N. E. 753, the Supreme Court of Massachusetts held that a combination of workmen can refuse to work when the pointing of bricks is given to others than the members of the organization who lay the bricks. The Court says that the "fact that the employers are forced to do what they do not want to do is not decisive of the legality of the union's acts" and "the fact that the business of a plaintiff is destroyed by the acts of the defendants done in pursuance of their right of competition is not decisive of the legality of the acts.

There is an abundance of cases in the lower federal and state courts sustaining the right of organizations of workingmen to strike or picket, or to do both, when the conditions under which they work are inimicable to their best interests. This is also true when they are requested

to work with men who are not members of their organization or are not eligible for membership therein. The following are just a few of such cases:

Scott Stafford Opera House Co. v. Minneapolis Musicians Association, 118 Minn. 410, 136 N. W. 1092;

Empire Theatre Company v. Cloke, 53 Mont. 183, 163 Pac. 107;

Cohn & Roth Electric Co. v. Brick Layers, Masons and Plasterers Local Union, 92 Conn. 161, 101 Atl. 659;

Parkinson v. Building Trades Council, 154 Calif. 581, 90 Pac. 1027;

Rhode Bros. v. Musicians Protective Union, 37 R. I. 281, 92 Atl. 641;

National Fireproofing Company v. Mason Builders Ass'n, 169 Fed. 259;

Wabash Railway Company v. Hanahan, 121 Fed. 163;

Purvis v. Local No. 500, 214 Pa. 348, 63 Atl. 585;

Kemp v. Amalgamated Ass'n of Street Railway Employes, 255 Ill. 241, 99 N. E. 388.

It thus can be readily seen that union rules and regulations as to membership, and rules that its members shall not work with anyone who is not a "practical craftsman" are not subject to review nor can relief be had therefrom in any court of the United States. This is especially true where, as in this case, the rule is promulgated on reasonable grounds. The fact that appellant is not a "practical craftsman" and therefore union men are not permitted to work with such unqualified mechanic, are disabilities distinctly personal to the appellant. According to the rules and constitution of the respondent union the appellant was disqualified to work with the tools of the trade in so far as the union is concerned; and the union members were dis-

qualified from working with him as an employer since he was not a skilled craftsman. In order, therefore, for appellant to secure a union contract he would be obliged to agree not to work with the tools of the trade. If he persists in working with the tools of the trade, thus refusing to accede to the union request, it is within the rights of the union to advertise to the world that he is a nonunion contractor, and to engage in the acts which have always been declared lawful and which are declared lawful under the act. The failure to restrain those lawful acts in furtherance of such dispute does not deprive the appellant of any rights under the Constitution or laws of the United States or the State of Wisconsin, regardless of the existence of the Wisconsin Labor Code or similar enactments.

CONCLUSION.

It is respectfully submitted that the United States Supreme Court has no jurisdiction in this case, nor can it allow this appeal for the purposes of reviewing the decision of the Supreme Court of the State of Wisconsin, because there is no federal question involved here. The Wisconsin Labor Code is a jurisdictional enactment. Within the proper exercise of the police power of the State Legislature, the Code provides for a certain procedure to be taken in cases growing out of involving labor disputes. Further than that, the federal question which it is claimed is involved in this case has been decided adversely to the appellant by this Court, and for that reason it is no longer a substantial one. This Court cannot entertain jurisdiction for the further reason that the only purposes for which such jurisdiction is invoked now is to disturb the findings of fact made by the Wisconsin

Supreme Court, which findings of fact are amply supported by the record. Under such findings, since it has been determined that the acts complained of are peaceful ones, and also determined that such acts are for the legitimate purpose of furthering the interests of defendant unions and not for the purpose of maliciously interfering with the plaintiff's rights, it is clear that the question has been decided adversely by this Court in prior cases. Also, this Court should not take jurisdiction in this matter because the refusal on the part of the defendants to enter into a contract with the appellant is based on a rule of the defendant unions that its members shall not work with a person, be he employer or journeyman, who has not served an apprenticeship, entitling him to be classed as a "practical craftsman." Rules of apprenticeship are reasonable, and such rules and regulations are not subject to judicial interference.

Respectfully submitted,

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